

Office of the Secretary of Defense

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(ii) *Authority*: 5 U.S.C. 552a(k)(1).

(iii) *Reasons*: From subsection 5 U.S.C. 552a(d) because granting access to information that is properly classified pursuant to E.O. 12958, as implemented by DoD 5200.1-R, may cause damage to the national security.

[65 FR 53168, Sept. 1, 2000, as amended at 66 FR 41780, Aug. 8, 2001]

PART 312—OFFICE OF THE INSPECTOR GENERAL (OIG) PRIVACY PROGRAM

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AUTHORITY: Pub. L. 93-579, 88 Stat 1896 (5 U.S.C. 552a).

SOURCE: 56 FR 51976, Oct. 17, 1991, unless otherwise noted.

§ 312.1 Purpose.

Pursuant to the requirements of the Privacy Act of 1974 (5 U.S.C. 552a) and 32 CFR part 286a-DoD Privacy Program, the following rules of procedures are established with respect to access and amendment of records maintained by the Office of the Inspector General (OIG) on individual subjects of these records.

§ 312.2 Definitions.

(a) All terms used in this part which are defined in 5 U.S.C. 552a shall have the same meaning herein.

(b) As used in this part, the term "agency" means the Office of the Inspector General (OIG), Department of Defense.

§ 312.3 Procedure for requesting information.

Individuals should submit inquiries regarding all OIG files by mail to the

Assistant Inspector General for Investigations, ATTN: FOIA/PA Division, 400 Army Navy Drive, Arlington, VA 22202-2884. All personal visits will require some form of common identification.

§ 312.4 Requirements for identification.

Only upon proper identification will any individual be granted access to records which pertain to him/her. Identification is required both for accurate record identification and to avoid disclosing records to unauthorized individuals. Requesters must provide their full name and as much information as possible about the record being sought in order that a proper search for records can be accomplished. Inclusion of a telephone number for the requester is recommended to expedite certain matters. Requesters applying in person must provide an identification with photograph, such as a driver's license, military identification card, building pass, etc.

[59 FR 2746, Jan. 19, 1994]

§ 312.5 Access by subject individuals.

(a) No individual will be allowed access to any information compiled or maintained in reasonable anticipation of civil or criminal actions or proceedings or otherwise exempt under § 312.12. Requests for pending investigations will be denied and the requester instructed to forward another request giving adequate time for the investigation to be completed. Requesters shall be provided the telephone number so they can call and check on the status in order to know when to resubmit the request.

(b) Any individual may authorize the OIG to provide a copy of his/her records to a third part. This authorization must be in writing, must designate the recipient by name, must specify the records or portion to be provided to the recipient, and should accompany the initial request to the OIG.

[56 FR 51976, Oct. 17, 1991, as amended at 59 FR 2746, Jan. 19, 1994]

§ 312.6 Fees.

Requesters will be charged only for the reproduction of requested documents and special postal methods, such

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as express mail, if applicable. There will be no charge for the first copy of a record provided to any individual. Thereafter, fees will be computed as set forth in appropriate DoD Directives and Regulations.

§ 312.7 Request for correction or amendment.

(a) Requests to correct or amend a file shall be addressed to the system manager in which the file is located. The request must reasonably describe the record to be amended, the items to be changed as specifically as possible, the type of amendment (e.g., deletion, correction, amendment), and the reason for amendment. Reasons should address at least one of the following categories: Accuracy, relevance, timeliness, completeness, fairness. The request should also include appropriate evidence which provide a basis for evaluating the request. Normally all documents submitted, to include court orders, should be certified. Amendments under this part are limited to correcting factual matters and not matters of official judgment or opinions, such as performance ratings, promotion potential, and job performance appraisals.

(b) Requirements of identification as outlined in § 312.4 apply to requests to correct or amend a file.

(c) Incomplete requests shall not be honored, but the requester shall be contacted for the additional information needed to process the request.

(d) The amendment process is not intended to permit the alteration of evidence presented in the course of judicial or quasi-judicial proceedings. Any amendments or changes to these records normally are made through the specific procedures established for the amendment of such records.

(e) Nothing in the amendment process is intended or designed to permit a collateral attack upon what has already been the subject of a judicial or quasi-judicial determination. However, while the individual may not attack the accuracy of the judicial or quasi-judicial determination, he or she may challenge the accuracy of the recording of that action.

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§ 312.8 OIG review of request for amendment.

(a) A written acknowledgement of the receipt of a request for amendment of a record will be provided to the requester within 10 working days, unless final action regarding approval or denial will constitute acknowledgement.

(b) Where there is a determination to grant all or a portion of a request to amend a record, the record shall be promptly amended and the requesting individual notified. Individuals, agencies or DoD components shown by disclosure accounting records to have received copies of the record, or to whom disclosure has been made, will be notified of the amendment by the responsible OIG official.

(c) Where there is a determination to deny all or a portion of a request to amend a record, OIG will promptly advise the requesting individual of the specifics of the refusal and the reasons; and inform the individual that he/she may request a review of the denial(s) from the OIG designated official.

§ 312.9 Appeal of initial amendment decision.

(a) All appeals of an initial amendment decision should be addressed to the Assistant Inspector General for Investigations, ATTN: FOIA/PA Division, 400 Army Navy Drive, Arlington, VA 22202-2884. The appeal should be concise and should specify the reasons the requester believes that the initial amendment action by the OIG was not satisfactory. Upon receipt of the appeal, the designated official will review the request and make a determination to approve or deny the appeal.

(b) If the OIG designated official decides to amend the record, the requester and all previous recipients of the disputed information will be notified of the amendment. If the appeal is denied, the designated official will notify the requester of the reason of the denial, of the requester's right to file a statement of dispute disagreeing with the denial, that such statement of dispute will be retained in the file, that the statement will be provided to all future users of the file, and that the requester may file suit in a federal district court to contest the OIG decision not to amend the record.

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(c) The OIG designated official will respond to all appeals within 30 working days or will notify the requester of an estimated date of completion if the 30 day limit cannot be met.

§ 312.10 Disclosure of OIG records to other than subject.

No record containing personally identifiable information within a OIG system of records shall be disclosed by any means to any person or agency outside the Department of Defense, except with the written consent of the individual subject of the record or as provided for in the Act and DoD 5400.11-R (32 CFR part 286a).

§ 312.11 Penalties.

(a) An individual may bring a civil action against the OIG to correct or amend the record, or where there is a refusal to comply with an individual request or failure to maintain any records with accuracy, relevance, timeliness and completeness, so as to guarantee fairness, or failure to comply with any other provision of the Privacy Act. The court may order correction or amendment of records. The court may enjoin the OIG from withholding the records and order the production of the record.

(b) Where it is determined that the action was willful or intentional with respect to 5 U.S.C. 552a(g)(1) (C) or (D), the United States shall be liable for the actual damages sustained, but in no case less than the sum of \$1,000 and the costs of the action with attorney fees.

(c) Criminal penalties may be imposed against an officer or employee of the OIG who discloses material, which he/she knows is prohibited from disclosure, or who willfully maintains a system of records without compliance with the notice requirements.

(d) Criminal penalties may be imposed against any person who knowingly and willfully requests or obtains any record concerning another individual from an agency under false pretenses.

(e) All of these offenses are misdemeanors with a fine not to exceed \$5,000.

§ 312.12 Exemptions.

(a) *Exemption for classified records.* Any record in a system of records maintained by the Office of the Inspector General which falls within the provisions of 5 U.S.C. 552a(k)(1) may be exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4)(G) through (I) and (f) to the extent that a record system contains any record properly classified under Executive Order 12958 and that the record is required to be kept classified in the interest of national defense or foreign policy. This specific exemption rule, claimed by the Inspector General under authority of 5 U.S.C. 552a(k)(1), is applicable to all systems of records maintained, including those individually designated for an exemption herein as well as those not otherwise specifically designated for an exemption, which may contain isolated items of properly classified information

(b) The Inspector General of the Department of Defense claims an exemption for the following record systems under the provisions of 5 U.S.C. 552a(j) and (k)(1)-(7) from certain indicated subsections of the Privacy Act of 1974. The exemptions may be invoked and exercised on a case by case basis by the Deputy Assistant Inspector General for Investigations or the Director, Investigative Support Directorate and Freedom of Information Act/Privacy Act Division Chief which serves as the Systems Program Managers. Exemptions will be exercised only when necessary for a specific, significant and legitimate reason connected with the purpose of the records system.

(c) No personal records releasable under the provisions of The Freedom of Information Act (5 U.S.C. 552) will be withheld from the subject individual based on these exemptions.

(d) *System Identifier:* CIG-04

(1) *System name:* Case Control System.

(2) *Exemption:* Any portion of this system which falls within the provisions of 5 U.S.C. 552a(j)(2) may be exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(G), (H), (I), (e)(5), (e)(8), (f), and (g).

(3) *Authority:* 5 U.S.C. 552a(j)(2).

(4) *Reasons:* From subsection (c)(3) because the release of accounting of disclosure would inform a subject that he or she is under investigation. This information would provide considerable advantage to the subject in providing him or her with knowledge concerning the nature of the investigation and the coordinated investigative efforts and techniques employed by the cooperating agencies. This would greatly impede OIG's criminal law enforcement.

(5) From subsection (c)(4) and (d), because notification would alert a subject to the fact that an open investigation on that individual is taking place, and might weaken the on-going investigation, reveal investigatory techniques, and place confidential informants in jeopardy.

(6) From subsection (e)(1) because the nature of the criminal and/or civil investigative function creates unique problems in prescribing a specific parameter in a particular case with respect to what information is relevant or necessary. Also, due to OIG's close liaison and working relationships with other Federal, state, local and foreign country law enforcement agencies, information may be received which may relate to a case under the investigative jurisdiction of another agency. The maintenance of this information may be necessary to provide leads for appropriate law enforcement purposes and to establish patterns of activity which may relate to the jurisdiction of other cooperating agencies.

(7) From subsection (e)(2) because collecting information to the fullest extent possible directly from the subject individual may or may not be practical in a criminal and/or civil investigation.

(8) From subsection (e)(3) because supplying an individual with a form containing a Privacy Act Statement would tend to inhibit cooperation by many individuals involved in a criminal and/or civil investigation. The effect would be somewhat adverse to established investigative methods and techniques.

(9) From subsection (e)(4) (G) through (I) because this system of records is exempt from the access provisions of subsection (d).

(10) From subsection (e)(5) because the requirement that records be maintained with attention to accuracy, relevance, timeliness, and completeness would unfairly hamper the investigative process. It is the nature of law enforcement for investigations to uncover the commission of illegal acts at diverse stages. It is frequently impossible to determine initially what information is accurate, relevant, timely, and least of all complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light.

(11) From subsection (e)(8) because the notice requirements of this provision could present a serious impediment to law enforcement by revealing investigative techniques, procedures, and existence of confidential investigations.

(12) From subsection (f) because the agency's rules are inapplicable to those portions of the system that are exempt and would place the burden on the agency of either confirming or denying the existence of a record pertaining to a requesting individual might in itself provide an answer to that individual relating to an on-going investigation. The conduct of a successful investigation leading to the indictment of a criminal offender precludes the applicability of established agency rules relating to verification of record, disclosure of the record to that individual, and record amendment procedures for this record system.

(13) For comparability with the exemption claimed from subsection (f), the civil remedies provisions of subsection (g) must be suspended for this record system. Because of the nature of criminal investigations, standards of accuracy, relevance, timeliness, and completeness cannot apply to this record system. Information gathered in an investigation is often fragmentary and leads relating to an individual in the context of one investigation may instead pertain to a second investigation.

(e) *System Identification:* CIG-06.

(1) *System name:* Investigative Files.

(2) *Exemption:* Any portion of this system which falls within the provisions of 5 U.S.C. 552a(j)(2) may be exempt from the following subsections of 5 U.S.C. 552a (c)(3), (c)(4), (d), (e)(1), (e)(2), (e)(3), (e)(4) (G), (H), (I), (e)(5), (e)(8), (f), and (g).

(3) *Authority:* 5 U.S.C. 552a(j)(2).

(4) *Reasons:* From subsection (c)(3) because the release of accounting of disclosure would inform a subject that he or she is under investigation. This information would provide considerable advantage to the subject in providing him or her with knowledge concerning the nature of the investigation and the coordinated investigative efforts and techniques employed by the cooperating agencies. This would greatly impede OIG's criminal law enforcement.

(5) From subsection (c)(4) and (d), because notification would alert a subject to the fact that an open investigation on that individual is taking place, and might weaken the on-going investigation, reveal investigatory techniques, and place confidential informants in jeopardy.

(6) From subsection (e)(1) because the nature of the criminal and/or civil investigative function creates unique problems in prescribing a specific parameter in a particular case with respect to what information is relevant or necessary. Also, due to OIG's close liaison and working relationships with other Federal, state, local and foreign country law enforcement agencies, information may be received which may relate to a case under the investigative jurisdiction of another agency. The maintenance of this information may be necessary to provide leads for appropriate law enforcement purposes and to establish patterns of activity which may relate to the jurisdiction of other cooperating agencies.

(7) From subsection (e)(2) because collecting information to the fullest extent possible directly from the subject individual may or may not be practical in a criminal and/or civil investigation.

(8) From subsection (e)(3) because supplying an individual with a form containing a Privacy Act Statement would tend to inhibit cooperation by many individuals involved in a criminal

and/or civil investigation. The effect would be somewhat adverse to established investigative methods and techniques.

(9) From subsection (e)(4) (G) through (I) because this system of records is exempt from the access provisions of subsection (d).

(10) From subsection (e)(5) because the requirement that records be maintained with attention to accuracy, relevance, timeliness, and completeness would unfairly hamper the investigative process. It is the nature of law enforcement for investigations to uncover the commission of illegal acts at diverse stages. It is frequently impossible to determine initially what information is accurate, relevant, timely, and least of all complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance as further investigation brings new details to light.

(11) From subsection (e)(8) because the notice requirements of this provision could present a serious impediment to law enforcement by revealing investigative techniques, procedures, and existence of confidential investigations.

(12) From subsection (f) because the agency's rules are inapplicable to those portions of the system that are exempt and would place the burden on the agency of either confirming or denying the existence of a record pertaining to a requesting individual might in itself provide an answer to that individual relating to an on-going investigation. The conduct of a successful investigation leading to the indictment of a criminal offender precludes the applicability of established agency rules relating to verification of record, disclosure of the record to that individual, and record amendment procedures for this record system.

(13) For comparability with the exemption claimed from subsection (f), the civil remedies provisions of subsection (g) must be suspended for this record system. Because of the nature of criminal investigations, standards of accuracy, relevance, timeliness, and completeness cannot apply to this record system. Information gathered in an investigation is often fragmentary and leads relating to an individual in

the context of one investigation may instead pertain to a second investigation.

(f) *System identifier*: CIG-15.

(1) *System name*: Departmental Inquiries Case System.

(2) *Exemption*: Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source. Any portions of this system which fall under the provisions of 5 U.S.C. 552a(k)(2) may be exempt from the following subsection of 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I).

(3) *Authority*: 5 U.S.C. 552a(k)(2).

(4) *Reasons*: From subsection (c)(3) because disclosures from this system could interfere with the just, thorough and timely resolution of the complaint or inquiry, and possibly enable individuals to conceal their wrongdoing or mislead the course of the investigation by concealing, destroying or fabricating evidence or documents.

(5) From subsection (d) because disclosures from this system could interfere with the just thorough and timely resolution of the complaint or inquiry, and possibly enable individuals to conceal their wrongdoing or mislead the course of the investigation by concealing, destroying or fabricating evidence or documents. Disclosures could also subject sources and witnesses to harassment or intimidation which jeopardize the safety and well-being of themselves and their families.

(6) From subsection (e)(1) because the nature of the investigation function creates unique problems in prescribing specific parameters in a particular case as to what information is relevant or necessary. Due to close liaison and working relationships with other Federal, state, local and foreign country law enforcement agencies, information may be received which may relate to a case under the investigative jurisdiction of another government agency. It

is necessary to maintain this information in order to provide leads for appropriate law enforcement purposes and to establish patterns of activity which may relate to the jurisdiction of other cooperating agencies.

(7) From subsection (e)(4) (G) through (H) because this system of records is exempt from the access provisions of subsection (d).

(8) From subsection (f) because the agency's rules are inapplicable to those portions of the system that are exempt and would place the burden on the agency of either confirming or denying the existence of a record pertaining to a requesting individual might in itself provide an answer to that individual relating to an on-going investigation. The conduct of a successful investigation leading to the indictment of a criminal offender precludes the applicability of established agency rules relating to verification of record, disclosure of the record to that individual, and record amendment procedures for this record system.

(g) *System Identifier*: CIG-16.

(1) *System name*: DOD Hotline Program Case Files.

(2) *Exemption*: Any portions of this system of records which fall under the provisions of 5 U.S.C. 552a(k)(2) and (k)(5) may be exempt from the following subsections of 5 U.S.C. 552a: (c)(3), (d), (e)(1), (e)(4)(G), (H), and (f).

(3) *Authority*: 5 U.S.C. 552a(k)(2) and (k)(5).

(4) *Reasons*: From subsection (c)(3) because disclosures from this system could interfere with the just, thorough and timely resolution of the complaint or inquiry, and possibly enable individuals to conceal their wrongdoing or mislead the course of the investigation by concealing, destroying or fabricating evidence or documents.

(5) From subsection (d) because disclosures from this system could interfere with the just, thorough and timely resolution of the complaint or inquiry, and possibly enable individuals to conceal their wrongdoing or mislead the course of the investigation by concealing, destroying or fabricating evidence or documents. Disclosures could also subject sources and witnesses to harassment or intimidation which

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jeopardize the safety and well-being of themselves and their families.

(6) From subsection (e)(1) because the nature of the investigation functions creates unique problems in prescribing specific parameters in a particular case as to what information is relevant or necessary. Due to close liaison and working relationships with other Federal, state, local, and foreign country law enforcement agencies, information may be received which may relate to a case under the investigative jurisdiction of another government agency. It is necessary to maintain this information in order to provide leads for appropriate law enforcement purposes and to establish patterns of activity which may relate to the jurisdiction of other cooperating agencies.

(7) From subsection (e)(4)(G) through (H) because this system of records is exempt from the access provisions of subsection (d).

(8) From subsection (f) because the agency's rules are inapplicable to those portions of the system that are exempt and would place the burden on the agency of either confirming or denying the existence of a record pertaining to a requesting individual might in itself provide an answer to that individual relating to an on-going investigation. The conduct of a successful investigation leading to the indictment of a criminal offender precludes the applicability of established agency rules relating to verification of record, disclosure of the record to that individual, and record amendment procedures for this record system.

[56 FR 51976, Oct. 17, 1991, as amended at 57 FR 24547, June 10, 1992; 61 FR 2916, Jan. 30, 1996; 64 FR 72929, Dec. 29, 1999]

§ 312.13 Ownership of OIG investigative records.

(a) Criminal and or civil investigative reports shall not be retained by DoD recipient organizations. Such reports are the property of OIG and are on loan to the recipient organization for the purpose for which requested or provided. All copies of such reports shall be destroyed within 180 days after the completion of the final action by the requesting organization.

(b) Investigative reports which require longer periods of retention may be retained only with the specific written approval of OIG.

§ 312.14 Referral of records.

An OIG system of records may contain records other DoD Components or Federal agencies originated, and who may have claimed exemptions for them under the Privacy Act of 1974. When any action is initiated on a portion of any several records from another agency which may be exempt, consultation with the originating agency or component will be affected. Documents located within OIG system of records coming under the cognizance of another agency will be referred to that agency for review and direct response to the requester.

PART 313—THE CHAIRMAN OF THE JOINT CHIEFS OF STAFF AND THE JOINT STAFF PRIVACY PROGRAM

AUTHORITY: Pub. L. 93-579, 88 Stat. 1896 (5 U.S.C. 552a).

§ 313.1 Source of regulations.

The Office of the Joint Chiefs of Staff is governed by the Privacy Act implementation regulations of the Office of the Secretary of Defense, 32 CFR part 311.

[40 FR 55535, Nov. 28, 1975. Redesignated at 56 FR 55631, Oct. 29, 1991, as amended at 56 FR 57802, Nov. 14, 1991]

PART 314—DEFENSE ADVANCED RESEARCH PROJECTS AGENCY, PRIVACY ACT OF 1974

AUTHORITY: Pub. L. 93-579, 88 Stat. 1896 (5 U.S.C. 552a).

§ 314.1 Source of regulations.

The Defense Advanced Research Projects Agency is governed by the Privacy Act implementation regulations of the Office of the Secretary of Defense, 32 CFR part 311.

[40 FR 55535, Nov. 28, 1975. Redesignated at 56 FR 55631, Oct. 29, 1991, as amended at 56 FR 57802, Nov. 14, 1991]